

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: MercyHouse, c/o Tim Hall, MercyHouse Pastor
PO Box 2203, Amherst MA 01004

Date application filed with the Town Clerk: May 21, 2008

Nature of request: A Special Permit for the use of the parish house as a religious community house on a non-conforming property, under Sections 3.333 and 9.22 of the Zoning Bylaw

Address: 367 North Pleasant Street (Map 11C, Parcel 247, R-G Zoning District)

Legal notice: Published June 11 and June 18, 2008 in the Daily Hampshire Gazette and sent to abutters on June 9, 2008

Board members: Thomas Simpson, Barbara Ford and Jane Ashby

Submissions: The petitioner submitted with the application a Management Plan, a site and building plan prepared by Ford Gillen Architects, dated 5/19/08, and a Rental Agreement for boarders.

The zoning assistant submitted a memo concerning the application dated June 20, 2008 focusing on the non-conforming aspects of the property and lack of parking. Also submitted was a Site Plan Review FY2005-00007 from the Planning Board for use of the second and third floor of the parish house as a church-related residential facility, with the first floor use as church offices.

A letter from an abutter, Rev. Lyle Seger of 12 Pleasant Court, received June 26, 2008, remarked on the noise from concerts held at the church next door to the parish house.

For the continued hearing September 11, 2008, the applicant submitted revised site and building plans prepared by Ford Gillen Architects, received August 1, 2008 and four letters of support for the proposal from Rev. Robert Krumrey, lead pastor, Victoria Kerman, Susannah Sanford and Danica Willis, residents of MercyHouse.

On September 11, 2008, staff received an email correspondence from Town Counsel in response to 3 questions asked by the Board during the June 26, 2008 public hearing.

Site Visit:

The Board met with Assistant Pastor Nate Cartel at the site and observed the following:

- A large 19th century Queen Anne style house located on a busy street close to the University of Massachusetts, with fraternities and other student housing also in the neighborhood;
- The non-conformity of the property, with virtually no sideyard on either side of the house and no room for parking, with the wrap-around driveway located on adjacent properties;
- The closeness of the house to the MercyHouse church next door;

- The house, with approximately 10-12 bedrooms, on three floors of the house, plus a kitchen on both the first and second floors;
- The small community space/dining room on the first floor.

Public Hearing: June 12, 2008

Assistant Pastor Nate Cartel spoke to the application at the hearing. He gave the following statements:

- MercyHouse is a subset of the Christian Southern Baptist Church;
- They wish to change the use of the parish house from offices and four rooms to a religious community house under Section 3.333 of the Zoning Bylaw;
- Three years ago the Methodist Church, the previous owners of the house and church building, used the first floor of the house as offices; last year the Methodist Church no longer used the offices as all of their operations moved over to their new building;
- There are now 12 rooms in the building that could be used for bedrooms and community and religious life;
- They are requesting to have between 11 and 20 tenants, some in double occupancy rooms;
- All the occupants of the proposed religious house will be members of MercyHouse;
- All of the occupants will be women; most will be students;
- The cooking facilities on the second floor will be removed and that space will become a bedroom;
- A common space for residents and guests will be available on the first floor next to the kitchen;
- All those living in the building will be responsible for their own food;
- The house is governed via a lease that forbids alcohol use and overnight male guests;
- A staff member will be the “house mom” and manager;
- No parking is available on site, but the First Baptist Church nearby has offered to rent parking spaces for the house members;
- There will be a new sprinkler system, but there now will be no exterior changes made to the house at this time (i.e., the extra egress and rebuilt exterior stairway);
- There will be no sign for the house.

Mr. Simpson noted that a 1979 court decision stated that a Special Permit is not required for educational or religious use, and questioned if the applications even needed a Special Permit to house student members of the MercyHouse Church.

Building Commissioner Weeks stated that the lot is very non-conforming: it is about half of the 12,000 sq. ft. area required, plus frontage, side yard setbacks, building and lot coverage do not meet the requirements of the Zoning Bylaw. The applicants have proposed a change in use that had been “grandfathered” to a more intense residential use. They also planned to add an additional egress on the first floor and rebuild the outside steps to the second floor, thus extending the footprint of the building. Therefore, according to Town Counsel for similar cases in the past, a Special Permit to change the use or the footprint is necessary, but the permit cannot be denied. Also, reasonable conditions must be applied for the permitted use.

Ms. Ford noted that the submitted floor plans were confusing, and wanted clarification of where the single or double bedrooms would be. Mr. Cartel stated the following:

- First floor – three (3) bedrooms, two of which could have double occupancy;
living room and kitchen;
- Second floor – six (6) bedrooms, three of which could have double occupancy;
- Third floor – two (2) bedrooms.

Mr. Simpson said that the Board will need a scaled set of drawings of the house, with dimensions labels for each room. The rooms then must be used only as labeled. For example, if the second floor kitchen is to become a bedroom, then the kitchen must be removed and the room labeled as a bedroom.

Ms. Ford asked about landscaping and recreational space. The lot is very small and there is little room for either. The applicant responded that the building could be considered as a dormitory that is part of the church. Groups can gather in the living room or bedrooms during the day, and the church building next door is used for recreation. Most members of the church are 18-25 years of age and use the church building for concerts and other types of recreation.

The Board had a number of questions concerning how the house was classified as a religious building under Section 3.333 of the Zoning Bylaw. The zoning assistant stated that Section 3.333 seemed to be the closest category in which to classify the use. Other religious houses such the Chabad House, the Ark and the Hillel House are similar in that students adhering to that particular religion live at those establishments.

Mr. Simpson asked if the students living in the house have religious training as they do in the other religious houses. The answer was no. There are not college credit courses offered in the house either, as there are in the other religious houses.

Ms. Ashby asked how the house is different than a dorm or a sorority – are there religious practices within the house? The applicant said that there is a house dinner on Wednesday evening plus a Bible study and prayer. The Bible study is called “House Church”, and they are so popular now that there are four such meetings on Wednesdays, two located in the church building and the fourth at the minister’s home.

The applicant stated that the House Church evening is the main religious activity of MercyHouse. The Sunday morning service is more of an “outreach strategy” than a religious service.

Ms. Ashby asked if anything is required of the tenants other than the terms of the lease (no smoking, no alcohol, etc). The applicant said no. Ms. Ford asked about the Wednesday Bible study. The applicant said that it is not required, but residents do attend and bring their friends for dinner and study.

The applicant added that folks who live in the house have a different orientation than those who live in dorms or sororities. They are more rooted in their faith, he said, and want a safe place where housemates have the same values and can provide a support system for one another.

Ms. Ashby noted that if the house was like a convent (Section 3.333), then the tenants would not be paying rent. The applicant responded that funding from the house goes to supporting the church activities.

The Board then turned to other aspects of the application. In terms of refuse/recycling pickup, the applicant said that they will be contracting with Duseau Trucking in January. They will have barrels then instead of a dumpster, and also have recycling containers. The barrels will be stored under the staircase.

Mr. Simpson asked if the church building and house are on separate lots. The answer was yes, the lots are separate.

Mr. Simpson asked about exterior lighting. The applicant stated that there are motion sensor lights on the sides, the front porch and the exterior stairways. There is high wattage on the south side next to the parking for safety reasons. Mr. Simpson said that the lights need to be downcast.

In terms of maintenance, the applicant said that MercyHouse does its own landscaping, mowing, snow removal, repairs, etc. There are three bicycle racks next door on the church property.

Ms. Ford asked about future changes to the back egress. The applicant said that the back stairway to the second floor was deemed to be structurally sound by an engineer (Jacob Smith) and they don't need to change it at this time. As for means of egress, there are two for each floor now. The one proposed for the north side of the first floor is not needed at this time.

The applicant said that the house is registered with the Health Department as a rental unit. Inspections are made of the common areas, the hall, entrances, and basement. The basement has laundry facilities, but is not used for storage.

Mr. Simpson read into the record a letter from an abutter, Rev. Lyle Seger of 12 Pleasant Court, who was concerned about noise coming from the church during evening hours. The Board noted that the complaint was not relevant to this application.

Mr. Simpson indicated to the applicant that better plans were needed. Each floor should be shown separately, in quarter inch scale with dimensions for each room. A site plan showing the property lines and the setbacks also is needed.

In addition, the Board asked for a legal opinion from the Town Attorney for three things:

1. Whether a Special Permit is needed or just Site Plan Review for a religious use.
2. Whether the use of the house is in fact a "religious" use, classified under Section 3.333 of the Bylaw;.
3. Whether it is legal to rent only to members of the MercyHouse.

Ms. Ashby made a motion to continue the hearing to August 7, 2008 at 7:30 pm. Ms. Ford seconded the motion, and the vote was unanimous to continue the hearing to August 7, 2008 at 7:30 pm.

Continued Public Hearing: August 7, 2008

No testimony was heard from the applicant or public due to a pending decision from Town Counsel.

Mr. Simpson made a motion to continue the hearing to September 18, 2008 at 7:30 pm. Ms. Ashby seconded the motion, and the Board voted unanimously to continue the public hearing to September 18, 2008 at 7:30 pm.

Continued Public Hearing: September 18, 2008

Minister Robert Krumrey, assistant pastor Nate Cartel and resident pastor Kristin Brumbaugh were present to speak to the application at the hearing. They presented the Board with updated floor plans showing room use, dimensions and labels as previously requested by the Board. They identified approximately 12 possible bedrooms.

Ms. Ford inquired as to the total number of people expected to live on site. She said her main concern was the lack of common space. The plans show only one common room on the first floor. The applicant responded that are requesting an occupancy between 12-20 people and noted that the location of the common room could be changed to a room on the second floor..

Mr. Simpson asked how many people live there now. The applicant noted that there are 4 residents who pay rent and a staff person, Kristin Brumbaugh, who acts as a resident pastor and resident house manager.

Mr. Simpson asked the Building Commissioner if there is a minimum size for a double bedroom. Building Commissioner Weeks noted that the size is restricted by the Board of Health; 100 square feet is the minimum for a single room, and that something like 125 square feet minimum is required for a double room.

Mr. Cartel noted that the smallest room is 125 sq. ft. in size and understands that it meets the minimum size requirements.

Mr. Simpson read into the record the response from Amherst Town Counsel to the Board three questions from the earlier hearing, dated September 11, 2008. The Town attorney's opinions were:

1. The residence appears to be more a residential use than a religious use, and should not be classified under Section 3.333 of the Zoning Bylaw;
2. A Special Permit is required due to the extent of the non-conforming use;
3. It is legal to rent only to member of Mercy House, but it is not a zoning question and need not be addressed by the Board.

The applicants said that they had not received a copy of the email correspondence from the Town Counsel. Zoning staff informed the applicants that a copy had been mailed to the MercyHouse address the week previous to the hearing. Another copy was provided to the applicants at the hearing.

Mr. Krumrey stated that Mercy House is attempting to receive the same classification as the Hillel House, another campus ministry, on the UMass campus. He said that there are current discussions with UMass regarding the formal certification process for ministries and chaplains, and for obtaining religious accreditation. The North American Missions have sponsored their church to be located near UMass.

The Board discussed the parking requirements and the proposal requiring tenants to park on neighboring property. Specifically, the Board asked whether there had been any written agreement between Mercy House and the Baptist Church allowing tenants to park on their property. The applicant noted that they had a verbal agreement but did not have written agreement. The applicant noted that the lease requires tenants to obtain a parking permit, but that they would obtain a written agreement from the Baptist Church for the Board.

The Board discussed the floor plans and made various clarifications and comments including an existing window excluded from the plan. Ms. Ashby stated that all bedrooms need to have locks, bedroom #1 on the plans needs modification to an interior wall and that all bedrooms need at least one window.

Ms. Ashby made a motion to close the public hearing and schedule a public meeting for October 2, 2008 at 7:30 pm. Ms. Ford seconded the motion, and the vote was unanimous to close the public hearing and schedule a public hearing for October 2, 2008, 7:30 pm.

Public Meeting: October 2, 2008

Minister Robert Krumrey, assistant pastor Nate Cartel and resident pastor Kristin Brumbaugh were present at the public meeting.

Mr. Simpson began by stating that the Board must determine whether the project should be considered under Section 3.330, religious use, or 9.22, extension of a non-conforming use, of the Zoning Bylaw. Mr. Simpson stated that, in his opinion, the application does not fit within the scope of Section 3.330, religious use. He added that the information provided is evidence that the property was formerly used as a residential use. Specifically, he referenced a 2005 Site Plan Review approval by the Planning Board allowing residential uses on the second and third floors.

Mr. Simpson stated that, in his opinion, the application falls under Section 9.22, extension of a non-conforming use.

Ms. Ford and Ms. Ashby both agreed that the application should be considered under Section 9.22, extension of a non-conforming use, based upon the testimony presented by the applicant and the opinion of Town Counsel.

The Board further agreed that, since the application qualifies as an extension of a pre-existing non-conforming use, the issue of religious exemption is not necessary to consider.

Mr. Simpson stated that the Board's task is to consider the amount of residential use that should be permitted. The applicants are asking for occupancy of up to 20 tenants.

Ms. Ashby stated that she feels the residential density is too great, based upon her impressions at the site visit. She asked to review the existing conditions and proposed bedrooms. She noted that there are only two full baths on the second floor and one on the third floor, which could be a problem with intense residential use.

The Board reviewed and discussed converting one of the second floor bedrooms to common space, which would reduce the total number of bedrooms to 9 and the total number of residents to 16 residents.

Mr. Simpson indicated that the dwelling is on a busy street in Town, is near the UMass campus and is within walking distance to downtown and outdoor recreation opportunities. Mr. Simpson added that the proposed rooms appear to exceed the minimum size requirements for rooms and that historically (early 20th century) the building was used as a type of dormitory. Lastly, the Planning Board had given Site Plan Approval, which included the continuation of residential use, although this approval by its nature does not specify the use or total number of residents.

Ms. Ashby stated again that she felt the residential density was too great, but noted that she was not able to quantify that belief. She would not vote against it if the other Board members supported it.

Minister Rob Krusner stated that the house is considered a "parish", the definition of which includes residential use of members of a church congregation.

Ms. Ford stated that there were elements of the floor plans that weren't accurately shown, specifically the location of windows. The applicant stated that there are two small windows in each of the bedrooms facing the rear of the property that are not shown on the floor plan.

Mr. Simpson moved to waive the parking requirements for lodging of Section 7.001 of the Zoning Bylaw based upon submission of a written agreement to allow parking at the neighboring church property. Ms. Ashby seconded the motion. The Board voted unanimously to waive the parking requirements.

The Board spent the remainder of the public meeting crafting conditions of the Special Permit if the application were to be approved, allowing housing for MercyHouse members.

Findings:

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses because there are fraternities, sororities, religious homes and other dormitory-like uses in the immediate

area.

10.382 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site because the lease agreement limits alcohol use, overnight visitors, and is intended to be a residential respite for female tenants.

10.383 and 10.387 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians and the proposal provides convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets because there is no parking on the premises, but there is a wrap-around driveway on the adjacent north/south properties. A public sidewalk exists along North Pleasant Street for pedestrians, and the property is located close to central Amherst and the UMass campus.

10.384 – Adequate and appropriate facilities will be provided for the proper operation of the proposed use because the permit will require additional common space indoors for visitors and residents. Although no recreational space is available on the property, MercyHouse provides the church property next-door for recreation. Also, the lease approved by the Board limits much random-type activity that may be disruptive to the house in general.

10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables and other wastes because the property is connected to Town water/sewer, and the Management Plan describes the refuse/recyclable disposal process.

10.391 – The proposal protects unique or important historic features because the exterior of the house will not change, and the interior appears to have provided a rooming house use since the early 20th century.

10.393 – The proposal provides protection of adjacent properties by minimizing the intrusion of lighting because exterior lighting is required to be downcast by the conditions of this permit.

10.395 – The proposal does not create disharmony with respect to the use, scale and architecture of existing buildings in the vicinity because many of the houses in the area are also large Queen Anne type buildings which historically have housed a number of University students.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst. It also provides additional housing unit close to the University and the center of Town.

Public Meeting – Zoning Board Decision

Mr. Simpson made a motion to APPROVE the permit for extended residential use for members of MercyHouse, with conditions. Ms. Ford seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit to Mercy House to allow for up to 16 members to reside on the premises, with conditions.

THOMAS SIMPSON

BARBARA FORD

JANE ASHBY

FILED THIS _____ day of _____, 2008 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2008.
NOTICE OF DECISION mailed this _____ day of _____, 2008
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2008,
in the Hampshire County Registry of Deeds.

**Town of Amherst
Zoning Board of Appeals**

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit to Mercy House to allow up to 16 church members to live in the house, under Section 9.22 of the Zoning Bylaw, on the premises at 367 North Pleasant Street (Map 11C, Parcel 247, R-G Zoning District), subject to the following conditions:

1. There shall be no more than nine (9) bedrooms and no more than 16 residents in the dwelling.
2. There shall be common rooms on the first and second floors.
3. There shall be a resident on-site manager.
4. The dwelling shall be registered in accordance with the Town of Amherst Board of Health's Rental Property Registration Regulations, and such registration shall be kept current. A stamped and receipt-dated copy of each registration associated with this property shall be submitted to the Board.
5. A copy of a written agreement with the Baptist Church for parking associated with the MercyHouse residential use shall be submitted to the Board prior to the issuance of a Certificate of Occupancy.
6. After January 1, 2009, refuse shall be stored in a lidded 30 gallon trash container below the exterior stairs at the rear of the dwelling and all paper and recycling shall be stored within the dwelling.
7. There shall be no exterior signs on the property.
8. There shall be no separate cooking facilities in the dwelling other than in the first floor kitchen.
9. A bicycle storage rack for a minimum of 10 bicycles shall be located outside and at the rear of the dwelling.
10. All residents shall be members of the MercyHouse Church.
11. All exterior lights shall be downcast.
12. The property shall be managed in accordance with the Management approved by the Board at a public meeting on October 2, 2008.
13. All landscaping shall be installed and permanently maintained.
14. There shall be no permanent parking on the property; the rear paved area shall be used for temporary unloading only and shall be kept clear of any impediment to through traffic.
15. The exterior of the building shall be maintained in good order and repair at all times. Any changes to the exterior of the dwelling shall be submitted and approved by the Board at a public meeting.
16. Revised as-built floor plans showing all rooms labeled as to use and with dimensions shall be submitted and approved by the Board at a public meeting.
17. Deadbolts shall be placed on all bedroom doors in the house.
18. No indoor furniture may be placed on the front lawn or the front porch.
19. The windows of the first floor bedroom accessible from the porch shall be equipped with a protective grill to prevent entry from the porch. This grill shall be easily releasable from the interior in accordance with the State Building Code.
20. The permit shall expire upon change of ownership or management of the property.

TOM SIMPSON, Chair,
Amherst Zoning Board of Appeals

DATE